IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 7064 of 1997

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SMT. LATABEN KHIMBHANDBHAI PIPRODIA
VERSUS
STATE OF GUJARAT

Appearance:
MR CL SONI for the Petitioner
MS MANISHA LAVKUMAR, AGP, for Respondents No.1, 2 and 3.
MR DM THAKKAR for Respondent No.4

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 05/09/2000

C.A.V. JUDGMENT

1. The matter pertains to the grant of

authorisation for Fair price shop in Gotalavadi area of the city of Surat. There are two competitors namely, the petitioner and the respondent No.4. The Advisory Committee at the level of Taluka has recommended for grant of authorisation of Fair Price shop in the area aforesaid in favour of the petitioner. It is the case of the petitioner that the order of authorisation for the Fair Price shop in the area concerned was made on 26th May, 1987. Final agreement has also been sent by the respondent No.3 for authorisation of this Fair Price shop to the petitioner. However, the petitioner was not permitted to run the Fair Price shop and on inquiry made, she came to know that the respondent No.4 had preferred an appeal before the respondent No.2 in the matter and the respondent No.2 has granted the interim relief. In the appeal aforesaid, the respondent No.4 has not impleaded the petitioner as a party. The appeal filed by the respondent No.2 has been allowed by the Collector under its order dated 14th July, 1997. This order has been taken by the petitioner in the revision before the State Government. Prayer has also been made by her for grant of interim relief. Interim relief has been granted. It is the grievance of the petitioner that the respondent No.2 and 3 for the reasons best known to them have not respected the interim relief granted by the State Government in favour of the petitioner. She made a complaint in this regard to the State Government. However, the petitioner filed special civil application No.6289/97 in this Court challenging the order passed by the respondent No.2 dated 14th July, 1997 and in the alternative praying for direction to the respondent No.1 to immediately decide the revision application of the petitioner. The respondent No.4 also in his turn filed special civil application No.6214/97 challenging the interim order passed by the respondent No.1 in the revision application filed by the petitioner. Both these above special civil applications came to be disposed of by the Court under the order dated 29th August, 1997. The special civil applications were disposed of with direction to the State Government to issue notice of the revision application to the respondent No.4 and to decide the same within two weeks' from the date of receipt of writ of the order after hearing all the interested parties. After hearing all the interested parties, this revision application came to be rejected on 12th September, 1997. Hence, this special civil application.

2. Shri C.L. Soni, learned counsel for the petitioner contended that the order of the Collector as a revisional authority is wholly perverse. In his

submission, the Collector was the person who is the Chairman of the District Advisory Committee and as such being a biased person he has to give a decision against the petitioner in the appeal filed by the respondent No.4. Carrying this contention further Shri Soni, learned counsel for the petitioner submitted that the revisional authority has given decision in favour of the respondent No.4 on the ground that the District Advisory Committee's recommendation are to be accepted over the recommendations made by the Taluka Advisory Committee. Shri Soni urged that neither of the authorities i.e. the appellate authority and revisional authority as well as the District Advisory Committee has examined and considered the comparative merits of the petitioner and the respondent No.4 for excepting the claim for grant of authorisation for the Fair Price shop in the area concerned. Concluding his submissions, Shri Soni submitted that the District Advisory Committee acted only on the recommendations of the M.L.A. and the concerned Minister. There is no contribution of it nor it has cared, bothered and made any attempt to consider the comparative claims of these two candidates for grant of authorisation of the Fair Price shop. In his submissions, Shri Soni submits that even if it is taken that the authorisation of the Fair Price shop was for open category, it is permissible for the category of scheduled caste to apply for the same and her claim has to be considered on merits.

3. On the other hand, the learned counsel for the respondent No.4 contended that the authorisation was reserved for open category unemployed persons and the petitioner has been given the authorisation by the Taluka Advisory Committee by giving preference to her being a scheduled caste candidate. Shri Thakker submits that the authorisation for the Fair Price Shop is one of the modes of providing employment to educated unemployed persons by the State Government and the respondent No.4 stand on much higher footing for grant of authorisation of fair price shop in his favour as compared to the petitioner. The petitioner is though educated unemployed but being an unmarried woman is residing with her parents, Shri Thakker urges that it is nothing but only an act on the part of the family members of this lady to get authorisation for fair price shop for themselves. It has to be managed by the father or brother of the petitioner and not by herself. Learned counsel for the respondent No.4 on being put by the Court is unable to satisfy that the comparative merits of the petitioner and the respondent No.4 has been considered by the respondent -District Collector in the

appeal or the State Government in revision application or the District Collector as chairman of the District Advisory Committee or other members thereof. He also is unable to point out anything from the documents that any authority aforesaid has undertaken any exercise to find out the comparative merits of the petitioner and the respondent No.4 and to decide who is to be given the authorisation for fair price shop.

4. Having heard the learned counsel for the parties and going through the order of the state Government in revision, I am satisfied that it is absolutely a perverse order passed by the State Government. Learned counsel for the State Government has failed to point out or show any provision from the Essential Commodities Act, 1955 or the orders framed thereunder from time to time that in the matter of grant of authorisation for fair price shop, District Advisory Committee's recommendation is binding. It is not the recommendation of the District or the Taluka Advisory Committee binding but binding decision is to make comparative assessment of the applicants for grant of authorisation for fair price shop. The assessment of comparative merits of the candidates has to be made and then only on satisfaction thereof has to be given authorisation for fair price shop so that he/she may be able to serve the peoples. In case what the State Government said in the revision application is accepted then whatever the District Advisory Committee said it is a veto and has to be accepted. That is not the law. Otherwise also if we go on the merits of the matter, there is no contribution of the District Advisory Committee in the matter. It has not made any assessment of comparative merits or demerits of the petitioner and the respondent No.4. This exercise has to be undertaken by it more so where the Taluka Advisory Committee recommended for allotment of authorisation of the fair price shop in favour of the petitioner. The decision taken by the District Advisory Committee has been reproduced by the State Government in the revisional order in extenso wherefrom I find that the only contribution of the District Advisory Committee is to oblige or take it to be a command of M.L.A. Gulabdas Khasi and the Hon'ble Minister Babubhai Patel to give this authorisation for fair price shop in favour of the petitioner. The translation of the order of the revisional authority has been produced on the record by the petitioner and the correctness thereof has not been disputed by the learned counsel for the respondents. The petitioner is a woman and she belongs to scheduled caste. The respondent No.4 is also claiming himself to be a scheduled caste but what he says that as he was

scheduled caste of other State he was not taken to be scheduled caste in this State, meaning thereby, the respondent No.4 has also made his claim for grant of authorisation for fair price shop in his favour on the basis of he being an educated unemployed scheduled caste candidate. It is true that if the fair price shop in the area concerned is there for the open category the scheduled caste candidate may not be given the authorisation for fair price shop only on the ground that he/she is a scheduled caste but there is no bar that against the open category of the authorisation for fair price shop, the reserved category candidates cannot apply. If the reserved category candidates are educated unemployed they can apply in the open category for authorisation for fair price shop and their claims are to be considered on merits rather than to take it to be a command from the M.L.A. or the Hon'ble Minister and a last word to give authorisation for fair price shop to the person of their favour or choice. It is true that the open category fair price shops are given to S.C., S.T., Baxi Panch then general category will not get any chance but it is not the only matter. The reserved category candidates can apply for authorisation for fair price shop as what stated earlier and it is reiterated and in such matters it is true that only on the basis that they are belonging to S.C., S.T., Baxi Panch, they cannot be preferred. In such matters, their claim has to be considered on merits vis-a-vis general category candidate but here that has not been done. The petitioner has been excluded altogether from consideration for grant of authorisation for fair price shop in the area concerned for two reasons i.e she is S.C. and further M.L.A. and Hon'ble Minister has recommended for grant of this authorisation for fair price shop in favour of the respondent No.4. No decision has been taken on merits by the District Advisory Committee who is the best out of these two to serve the people by grant of authorisation for fair price shop. This approach of the District Advisory Committee is wholly perverse and arbitrary and it speaks of favouritism and nepotism. Any decision taken by the District Advisory Committee only on the basis of what it is desired by the M.L.A. or the Hon'ble Minister or both is a decision to be put in the category of extending of favour to the person of the choice and like of M.L.A. and the Hon'ble Minister. I fail to see any justification in the interference made by the M.L.A. and the Hon'ble Minister with the powers which are to be exercised by the District Advisory Committee in such matters. If a decision is influenced by the recommendation made by the M.L.A. and the Hon'ble

Minister it is not a fair and impartial decision of the District Advisory Committee and on the basis of which the authorisation for fair price ship given to the respondent No.4 cannot be allowed to stand. If we go by the decision of the revisional authority, as stated earlier and it is to be stated at the cost of repetition, that its sole consideration was that the District Advisory Committee's recommendations are binding. It is unfortunate that the authorities at the District level are acting at the desire of M.L.A. and the Hon'ble Minister. They have to take a fair, impartial and unbiased decision in the matter of grant of authorisation for fair price shop. They have to decide the rival claims of the candidates on merits and whosoever is found to be meritorious to serve the people best, he has to be preferred and be given authorisation for fair price shop in the area concerned. On the merits otherwise also, I fail to see any justification in the approach of the learned counsel for the respondent No.4 that the petitioner being an unmarried lady should be deprived of this right of consideration for the allotment of authorisation for fair price shop. Similarly also it is hardly of any relevance that the respondent No.4 is an educated unemployed person having a family of six members. Predominant consideration in such matters is who is the best to serve the people on authorisation of fair price shop in the area concerned. Rest are all irrelevant and extraneous consideration. I fail to see how a lady can be taken to be incompetent to run a fair price shop. There cannot be any assumption or presumption that an unmarried girl though otherwise she fulfills all the eligibility for grant of authorisation for fair price shop should not be granted the same only on the ground that she is residing with her parents and this application is nothing but only at the instance of her parents for their own benefits. There is no more necessity to digest and go on in detail on this aspect as it was not the consideration nor the ground give by the District Advisory Committee or the Appellate Authority or the Revisional Authority not to prefer the petitioner in the matter of grant of authorisation for fair price shop in comparison to the respondent No.4. The merits of the respondent No.4 is only and what is it is considered to be so, the recommendation made in his favour by M.L.A. Shri Gulabdas khasi and the the Hon'ble Minister Shri Babubhai Patel. The preference given by the District Advisory Committee on the ground mentioned in the revisional order for grant of authorisation for fair price shop to the respondent No.4 over the preference given to the petitioner by the Taluka Advisory Committee

is wholly perverse and untenable and it is a decision which speaks for favouritism and nepotism. I do not find respondent No.4 to be more meritorious than the petitioner in the matter nor I find that merely because the petitioner is an unmarried lady will not be in a position to control and manage the affairs of the fair price shop and run it effectively and efficiently. The respondent have not brought anything on the record from which it can be inferred that the petitioner is not suitable to run the fair price shop.

5. As a result of the aforesaid discussion, this petition succeeds and the same is allowed and the order of the Collector dated 14-7-1997 passed in Appeal No.5 of 1997 at annexure `G' and that of the State Government dated 12-9-1997 passed in Revision Application No.18 of 1997 at annexure `M' are quashed and set aside. The order of grant of authorisation in favour of the respondent No.4 for the Fair Price shop in the area concerned is also quashed and set aside and the order of the District Supply Officer granting authorisation to the petitioner for the Fair Price shop in the area concerned is confirmed. Rule is made absolute accordingly.

6. It is a fit case where exemplary costs has to be awarded to the petitioner but the petitioner being a woman is entitled for free legal aid, no such costs can be awarded. Despite of this right of free legal aid available, it is not availed of by the petitioner, the State of Gujarat cannot be burdened with costs. No order as to costs.

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